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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1930.

No. 195

COLUMBUS & GREENVILLE RAILWAY COMPANY ET AL., PETITIONERS AND APPELLANTS,

vs.

W. J. MILLER, STATE TAX COLLECTOR, FOR THE USE OF THE MISSISSIPPI LEVEE DISTRICT, RESPONDENT AND APPELLEE.

MOTION FOR PERMISSION TO FILE SUPPLEMENTAL BRIEF AND SUPPLEMENTAL BRIEF FOR APPELLANT AND PETITIONER.

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MOTION FOR PERMISSION TO FILE SUPPLEMENTAL BRIEF.

Now comes Columbus and Greenville Railway Company, petitioner and appellant in the above-styled cause, by its counsel of record, and moves the Court to file herewith a supplemental brief in reply to the supplemental brief filed on behalf of respondent and appellee.

Respectfully submitted,

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SUPPLEMENTAL BRIEF OF APPELLANT AND PETITIONER.

The case of W. J. Miller, State Tax Collector, For Use of Mississippi Levee District *vs.* Yazoo and Mississippi Valley Railroad Company, decided Monday, February 23, 1931—a copy of the opinion being attached to the supplemental brief of appellee and respondent—has, we think, no bearing on this case. In that case Mr. Miller, who is the respondent and appellee in the present case, sued the Yazoo and Missis-

sippi Valley Railroad Company for the ad valorem tax for the Mississippi Levee District in addition to the mileage tax at the rate of $350.00 per mile. There was doubt whether the statute made the mileage tax a substitute for the ad valorem and acreage tax or in addition thereto. The Supreme Court of Mississippi has now construed the statute law to mean that the mileage tax is in lieu of the ad valorem tax.

Counsel for appellee contend that there can be no doubt that a tax on the mileage basis in lieu of the ad valorem tax and acreage tax is valid. We have at no time in the present controversy contended that the mileage tax is in addition to other taxes, as it seemed to us plain enough that it was not intended to be an additional tax. We do not contend that the mileage tax is void solely because it is a tax based on mileage instead of the ad valorem and acreage taxes. It would undoubtedly be a valid tax if the amount of mileage tax were substantially the same as the taxes which it replaces. We must again repeat, since appellee so persistently ignores the fact, that the basis of invalidity of the mileage tax is the uncontradicted fact that it so greatly exceeds the taxes which it replaces that it shows an undeniable intention to discriminate against railroads and to oppress them under the guise of classification. The agreement printed on page 70 of the Transcript shows that the appellant was assessed for ad valorem taxes at the time in question at $1,000.00 per mile. The record also shows a total assessment of the Columbus and Greenville Railway was approximately $18,410. The record shows on page 40

by the testimony of Mr. Easterling that the ad valorem rate for the year 1926 was four mills and 1927 five mills. Consequently if taxed on the ad valorem basis appellant's levee tax for the year 1927 would have been only $92.05 plus an acreage tax of five cents an acre. Instead of this amount it has already paid $920.00.

For convenient reference and in compliance with section 27, Rule 2 (*f*), we print herewith the pertinent portions of the statutes cited which have not previously been printed in the record.

"*Chap. 156, Page 167, Acts of 1896.*

"An Act entitled An Act to amend Chapter 63 of the Sheet Acts of 1892, being an Act entitled an act to provide for the appointment of the Levee Commissioners to raise revenue to maintain the Levee in the Mississippi Levee District and to authorize the issuance of bonds by the Board of Mississippi Levee Commissioners and for other purposes, so that the same may read as follows: * * *

"SEC. 7. There is hereby annually levied and assessed a uniform tax of five cents an acre on each and every acre of land in the counties of Bolivar, Washington, Issaquena, Sharkey and Warren, included in the Mississippi Levee District and not in any incorporated city, town or village in said district and divided into lots of less than one acre. And a tax of five cents is hereby levied and assessed on each lot of less than one acre in each city, town or village in said district.

"SEC. 8. There shall be and is hereby levied and assessed a uniform ad valorem tax of five mills on the assessed value of all property, real and personal, lying and situated in the counties of Bolivar, Washington, Issaquena, Sharkey and Warren included in the Mississippi Levee District, as the same shall appear upon the assessment rolls of said counties respectively, and which said tax of five mills shall be collected annually.

"SEC. 9. That the acreage tax and tax on lots levied and assessed above be, and the same is hereby declared a tax in rem upon the land included therein, which land shall be subject to sale without further assessment unless the tax thereon be paid on or before the 15th day of December in each and every year, including the year 1892, whether the owners thereof have personal estate subject to taxation or not and such sale shall vest in the purchaser a good and valid title to such lands against any claims of every person whatever having claims or title thereto. * * *

"SEC. 16. That a tax of 1-5 of one per cent per pound be, and the same is hereby levied on all lint cotton annually grown in said district and the sum of one fifteenth of one cent per pound is hereby levied upon each and every pound of cotton in the seed raised and grown in said district and not ginned therein, which said tax shall continue until the year 1897, after which time said tax upon cotton may be by resolution of the Board of Mississippi Levee Commissioners repealed and abolished, provided, however, that the tax on cotton shall never be abolished so long as any bonds of said Levee Board which shall

have been issued prior to March 30th, 1892, are outstanding, unless by the written consent of the holders. * * *.

"Sec. 18. The Board of Levee Commissioners may at any time after the year 1892 in cases of any emergency increase the tax on cotton or the ad valorem tax or both, but the tax on cotton shall never be increased beyond one-third of one cent per pound for lint cotton, nor the ad valorem tax increased beyond ten mills. * * *.

"Sec. 28. Railroad taxation for levee purposes shall be and remain as provided by the act of March 12th, 1886, entitled an act for the payment of levee taxes by railroads in the Mississippi Levee District of this State. And said Board shall only be required to make a reduction in railroad taxation, when a reduction is made in the rate of taxation fixed by this bill.

"Approved March 19th, 1896."

Chap. 80, Laws of Mississippi of 1892.

"An Act to authorize and empower the Board of Levee Commissioners for the Yazoo-Mississippi Delta to levy a tax upon all privileges exercised within the said levee district.

"Sec. 1. Be it enacted by the legislature of the State of Mississippi as follows: The Board of Levee Commissioners for the Yazoo-Mississippi Delta be and it is hereby, authorized and empowered to levy a tax upon all privileges exercised, or which may hereafter be exercised, within the limits of said levee district, and to amend, repeal, or change the levy made by them:

but the said privilege taxes shall in no case exceed the taxes levied by the state on the same privileges."

Summing up, the ad valorem tax is general applying to all property in the district as assessed on the county assessment rolls, except only railroad property; the acreage tax is general applying to all land in the district except only railroad land. As shown by the record and stated in the brief for appellee the rate of taxation on the ad valorem basis was for the years in question 4 mills and 5 mills, respectively, and the acreage tax was only 2 cents per acre, a merely nominal amount, having been reduced by the Board of Levee Commissioners. Five mills means ½ of 1 per cent. By taking railroads out of the general tax statute for this levee district and taxing them at the arbitrary rate of $350 per mile the result is that this appellant would have to pay an annual tax which is 35 per cent its assessed value whereas other taxpayers pay only ½ of 1 per cent on the assessed value of theirs, regardless of individual benefit. The other railroad in the district, instead of paying at the rate of 5 mills, or ½ of 1 per cent, on its assessed value, would, if forced to pay $350 per mile, be paying a tax which is 1.2 per cent of its assessed value per annum.

This result could have been achieved in no other way than by placing railroads in a separate class and then taxing them on an arbitrary basis.

The prosperity of the important city of Greenville, in the heart of this levee district, is dependent on the cotton crops raised therein, but it is taxed for levee

purposes at only ½ of 1 per cent of its assessed value plus the nominal amount of two cents per lot. The railroads get some of the business of transporting the cotton (what is left after the trucks and the Government barge line get their share), and all the cities, towns, villages, cotton mills and factories in this district derive their business from the cotton crop; but, the first and most direct beneficiary is the farmer, who raises the cotton. Railroads get no more for hauling this cotton then they do for hauling any other cotton throughout the South.

Respectfully submitted,

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